

there is a question whether the delay was unintentional; and

(4) Filed either:

(i) Within one year of the date on which the application became abandoned; or

(ii) Within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date on which the application became abandoned.

(d) Any petition pursuant to paragraph (b) of this section not filed within six months of the date of abandonment of the application, must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. The terminal disclaimer must also apply to any patent granted on any continuing application entitled under 35 U.S.C. 120 to the benefit of the filing date of the application for which revival is sought.

(e) Any request for reconsideration or review of a decision refusing to accept the delayed payment upon petition filed pursuant to paragraphs (b) or (c) of this section, to be considered timely, must be filed within two months of the decision refusing to accept the delayed payment or within such time as set in the decision.

(f) The time periods set forth in this section cannot be extended, except that the three-month period set forth in paragraph (c)(4)(ii) of this section and the time period set forth in paragraph (e) of this section may be extended under the provisions of § 1.136.

(35 U.S.C. 6; 15 U.S.C. 1113, 1123)

[47 FR 41277, Sept. 17, 1982, as amended at 58 FR 44280, Aug. 20, 1993]

#### PLANT PATENTS

### § 1.161 Rules applicable.

The rules relating to applications for patent for other inventions or discoveries are also applicable to applications for patents for plants except as otherwise provided.

### § 1.162 Applicant, oath or declaration.

The applicant for a plant patent must be the person who has invented or

discovered and asexually reproduced the new and distinct variety of plant for which a patent is sought (or as provided in §§ 1.42, 1.43, and 1.47). The oath or declaration required of the applicant, in addition to the averments required by § 1.63, must state that he or she has asexually reproduced the plant. Where the plant is a newly found plant the oath or declaration must also state that it was found in a cultivated area.

(35 U.S.C. 6, Pub. L. 97-247)

[48 FR 2713, Jan. 20, 1983]

### § 1.163 Specification.

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

(b) Two copies of the specification (including the claim) must be submitted, but only one signed oath or declaration is required. The second copy of the specification may be a legible carbon copy of the original.

(c) The elements of the plant application, if applicable, should appear in the following order:

(1) Plant Application Transmittal Form.

(2) Fee Transmittal Form.

(3) Title of the invention.

(4) Cross-reference to related applications.

(5) Statement regarding federally sponsored research or development.

(6) Background of the invention.

(7) Brief summary of the invention.

(8) Brief description of the drawing.

(9) Detailed Botanical Description.

(10) A single claim.

(11) Abstract of the Disclosure.

(12) Drawings (in duplicate).

(13) Executed oath or declaration.

(14) Plant color coding sheet.

(d) A plant color coding sheet as used in this section means a sheet that specifies a color coding system as designated in a color dictionary, and lists every plant structure to which color is